DISPLACED ELEM LINEAGE EMANCIPATED MEMBERS ALLIANCE, Appellant	:	Order Affirming Area Director's May 26, 1998, Decision and Dismissing Appeals from Area Director's June 11, 1998, and July 24, 1998, Decisions
v.	:	
	:	Docket Nos. IBIA 98-87-A IBIA 98-95-A
SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	August 10, 1999

These consolidated appeals concern (1) a request by the Displaced Elem Lineage Emancipated Members Alliance (Appellant) for Federal acknowledgment as an Indian tribe; (2) Appellant's request for payment of attorney fees under 25 C.F.R. §§ 89.40-89.43; (3) an election dispute within the Elem Colony of Pomo Indians of the Sulphur Bank Rancheria (Colony); and (4) Elem Colony Resolution No. 95-06-24(C). 1/ The decisions on appeal were issued on May 26, 1998, June 11, 1998, and July 24, 1998, the first and third by the Acting Sacramento Area Director, Bureau of Indian Affairs (BIA), and the second by the Sacramento Area Director. 2/ Appellant is a group of present and/or former members of the Colony. These appeals were filed by Appellant's President, Richard J. Steward.

Appellant's first two appeals were addressed in the Area Director's May 26, 1998, decision. The Area Director held in that decision that Appellant's request for Federal acknowledgment was not properly before him and should instead be submitted to the Assistant Secretary - Indian Affairs in accordance with the regulations in 25 C.F.R. Part 83. He also held that Appellant was ineligible for payment of its attorney fees under 25 C.F.R. §§ 89.40-89.43 because it was not an acknowledged Indian tribe.

1/ Appellant filed four separate appeals with the Sacramento Area Director. The Area Director addressed the appeals in three decisions. By the time they reached the Board, these four issues had been consolidated into two notices of appeal. Because Appellant continues to refer to these four issues as four appeals, the Board will also refer to them in that way.

2/ Both officials will be referred to herein as the Area Director.

On May 11, 1998, Appellant filed a letter of intent to petition for Federal acknowledgment as an Indian tribe. See Register of Letters of Intent to Petition, published by BIA's Branch of Acknowledgment and Research at http://www.doi.gov/bia/0302stat.htm. Under 25 C.F.R. § 83.4, such letters of intent are required to be filed with the Assistant Secretary. By filing a letter of intent in accordance with 25 C.F.R. § 83.4, Appellant recognized that the regulations in 25 C.F.R. Part 83 are applicable to petitions for Federal acknowledgment and also recognized that, under those regulations, petitions and other filings must be made with the Assistant Secretary. Thus, Appellant has conceded that the Area Director was correct in holding that the question of Appellant's Federal acknowledgment was not properly before him.

Appellant sought payment of attorney fees under 25 C.F.R. §§ 89.40-89.43 in connection with a lawsuit entitled Elem Indian Colony v. Brown, C95-2648 SC (N.D. Cal.). No pleadings from that case are included in the record here, but it appears from statements made by Appellant that the case concerns an intra-tribal dispute.

Appellant contends that it is eligible for payment of attorney fees because it is an "other organization" under subsec. 89.43(a). Thus, Appellant contends, the Superintendent, Central California Agency, and the Area Director should have forwarded its request to the committee described in that subsection. 3/

Although subsec. 89.43(a) permits an "other organization" to submit a request for payment of attorney fees, the regulations as a whole make it clear that any such payments are to be used for the legal representation of a tribe. See, e.g., the title of the subpart, "Payment of Tribal Attorney Fees with Appropriated Funds." See also secs. 89.40, 89.41, 89.42. It is evident that an "other organization" which requests payment of attorney fees must do so in order to pay a tribe's litigation expenses.

Appellant does not contend that it sought funds in order to provide for legal representation of the Colony in the pending litigation. In fact, Appellant stated in its September 27, 1997, attorney fee request that the Colony was represented in the litigation by its own attorney. There is no doubt that Appellant sought funds in order to pay for its own representation.

3/ 25 C.F.R. § 89.43(a) provides:

"A tribe or other organization seeking funds under § 89.41 shall submit a written request through the Agency Superintendent and the Area Director, including

[Required contents of requests omitted.]

"All requests shall be considered by a committee consisting of the Deputy Assistant Secretary - Indian Affairs (Policy), or his delegate, the Director of the Office of Trust Responsibilities in BIA or his delegate, and the Associate Solicitor - Indian Affairs or his delegate."

Because the regulations in 25 C.F.R. §§ 89.40-89.43 do not authorize payment of attorney fees for any entity other than a tribe, the Area Director was correct in holding that Appellant was ineligible to have its attorney fees paid from appropriated funds. The Area Director was not required to forward Appellant's request to the committee described in subsec. 89.43(a) because the request failed to meet this threshold requirement.

Appellant has failed to show error in the Area Director's May 26, 1998, decision.

In his June 11, 1998, decision, the Area Director addressed Appellant's appeal from the Superintendent's recognition of the Colony's November 30, 1996, election. Appellant contended that the election results were invalid because the Superintendent and the Agency Tribal Operations Officer interfered in the election. The Area Director, after viewing a videotape of the election, concluded that the election was conducted properly; that all eligible Colony voters, including Appellant's members, were allowed to participate; and that "neither the Superintendent nor the Agency Tribal Operations Officer interfered with or in any way impacted the outcome of the tribal elections." Area Director's June 11, 1998, Decision at 2.

In his July 24, 1998, decision, the Area Director addressed Appellant's contention that Elem Resolution No. 95-06-24 (C), delegating authority to the Colony's Executive Committee, had expired. The Area Director found no evidence that the Colony had rescinded or amended the resolution and so found the resolution valid and in effect.

Appellant appears to be unaware of the seemingly unreconcilable positions it has taken in its four appeals. For purposes of seeking Federal acknowledgment, Appellant claims to be a group consisting of former members of the Colony. 4/ Presumably, it also claims for acknowledgment purposes to be an Indian tribe. On the other hand, in seeking payment of attorney fees, Appellant claims to be an "other organization," i.e., an organization other than an Indian tribe. In light of its disposition of Appellant's first two appeals, the Board need not address the tribal/non-tribal nature of Appellant's organization.

Appellant's status as an organization of any nature is, however, potentially fatal to its latter two appeals, as is its claim to be composed of former members of the Colony. Both of these appeals concern matters internal to the Colony. Because an organization could not be a tribal member or candidate for tribal office, Appellant, as an organization, would not be able

4/ See Mar. 26, 1998, letter from the Acting Chief, Branch of Acknowledgment and Research to Appellant's President: "Your [Mar. 12, 1998] letter describes your group as consisting of former members of the Elem Indian Colony of Pomo Indians."

to show that it had the right, i.e., standing, to challenge a tribal election before the Board. 5/ Nor could it show that it had standing to challenge a tribal enactment concerning the Colony's governmental organization and authorities. Cf. Shoshone-Bannock Tribal Tax Comm'n v. Acting Portland Area Director, 30 IBIA 185 (1997); Little Six, Inc. v. Minneapolis Area Director, 24 IBIA 50 (1993); Nisqually Indian Tribe v. Portland Area Director, 21 IBIA 110 (1991) (holding that organizations of various types lacked standing to challenge tribal enactments).

Even as individuals, Appellant's members face an insurmountable standing problem insofar as they have given up their membership in the Colony. Because the matters at issue in these two appeals are of purely internal concern to the Colony, former members would lack standing to challenge them before the Board.

However, it is not entirely clear that Appellant's members have actually abandoned their membership in the Colony. In order to give these two appeals every possible consideration, the Board will construe them as having been filed by Appellant's President, Richard J. Steward, as an individual, 6/ and will assume that Steward has maintained his membership in the Colony.

Even with the benefit of these assumptions, however, Steward's standing is not established. A tribal member, other than a defeated candidate, lacks standing to appeal to the Board from BIA's recognition of tribal election results. Further, a tribal member lacks standing to appeal a BIA decision concerning tribal governmental matters based upon that member's assessment of what is best for the tribe. See, e.g., Cassadore v. Acting Phoenix Area Director, 29 IBIA 280 (1996); Swab v. Sacramento Area Director, 25 IBIA 205 (1994); Stops v. Billings Area Director, 23 IBIA 282 (1993).

In addition, a person seeking to challenge a tribal election or the validity of a tribal enactment must show that he has exhausted his tribal remedies before appealing to the Board. E.g., Howe v. Acting Billings Area Director, 28 IBIA 142 (1995) (tribal election); Wells v. Acting Aberdeen Area Director, 24 IBIA 142 (1993) (tribal enactment).

These rules concerning standing and exhaustion of tribal remedies, which the Board applies in cases concerning intra-tribal disputes, are intended to implement the Federal policy of respect for tribal self-government and the principle that intra-tribal disputes should be resolved in tribal forums. E.g., Stops, 23 IBIA at 283-84; Wells, 24 IBIA at 146.

5/ As discussed below, not even all tribal members have standing to challenge a tribal election before the Board.

6/ Steward is the only person who signed the appeal documents and thus is the only person who can conceivably be deemed to have filed the appeals as an individual.

Steward does not allege that he was a candidate for office at the November 30, 1996, election. Even if he had so alleged, it would not matter here, because he has not shown that he even attempted to take his election challenge to a tribal forum, let alone that he exhausted his tribal remedies. Even though he alleges BIA interference in the election, the question of whether that alleged interference makes the election invalid is a question to be resolved under tribal law and in a tribal forum.

Likewise, Steward has failed to show that he attempted to take his challenge to Elem Resolution No. 95-06-24 (C) to a tribal forum. The question of the continuing validity of that resolution is a question of tribal law which should be resolved in a tribal forum.

Accordingly, Appellant's appeals from the Area Director's June 11, 1998, and July 24, 1998, decisions, even if deemed to have been brought by a member of the Colony, must be dismissed for lack of standing and failure to exhaust tribal remedies.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's May 26, 1998, decision is affirmed, and Appellant's appeals are dismissed insofar as they seek review of the Area Director's June 11, 1998, and July 24, 1998, decisions.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge